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October 19, 2004

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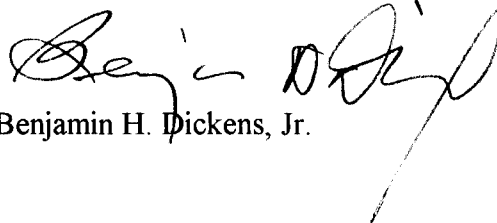
**Re: Reply Comments of South Slope Cooperative Telephone Company, Inc. For an Order and Rule Pursuant to Section 251(h)(2) of the Communications Act declaring that South Slope Cooperative Telephone Company, Inc. Shall Be Treated as an Incumbent Local Exchange Carrier in the Iowa Exchanges of Oxford, Tiffin and Solon WC Docket No. 04-347, (DA 04-2871)**

Dear Ms. Dortch:

Enclosed are an original and four copies of the Reply Comments of South Slope Cooperative Telephone Company, Inc. as described above.

Please date-stamp and return the enclosed copy of this filing. Please contact me if there are any questions regarding this filing.

Very truly yours,

  
Benjamin H. Dickens, Jr.

Enclosures

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Petition for Order Declaring South Slope	)	WC Docket No. 04-347
Cooperative Telephone Company, Inc.	)	(DA 04-2871)
An Incumbent Local Exchange Carrier in the	)	
Iowa Exchanges of Oxford, Tiffin and Solon	)	

**REPLY COMMENTS OF SOUTH SLOPE  
COOPERATIVE TELEPHONE COMPANY, INC.**

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Dated: October 19, 2004

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### **Summary**

South Slope Cooperative Telephone Company, Inc. (“South Slope”) hereby replies to the Comments submitted in this proceeding by the Iowa Utilities Board (“IUB”), Qwest Communications International, Inc. (“Qwest”), and Iowa Telecommunications Services, Inc. (“IT”).

Neither IUB nor Qwest request the Commission to deny South Slope’s request for reclassification as an Incumbent Interexchange Carrier (“ILEC”) for the Iowa exchanges of Oxford, Tiffin and Solon. IT is the **only** party to this proceeding requesting the Commission to deny South Slope the requested ILEC reclassification; and IT’s arguments are both self-serving and utterly devoid of merit.

While thinly disguised as public interest arguments, IT’s arguments are notable throughout for their speculation and absence of relevant facts. In 1998, the IUB amended South Slope’s Certificate to add the exchanges of Oxford, Tiffin and Solon; and, under Iowa law, certificates of public convenience are non-exclusive. IT is simply wrong in arguing that South Slope holds a CLEC certificate to provide service in the three exchanges; the IUB’s action was hardly perfunctory; and the IUB’s action is entitled weight by the Commission. South Slope’s tariffs and maps were revised to include the three exchanges. Thus, South Slope enjoys “co-ILEC ” status in each of the three exchanges.

IT’s other arguments provide no foundation to deny South Slope’s request. These arguments amount to no more than unsubstantiated conjecture of nefarious motives; and, in any event, are baseless.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Petition for Order Declaring South Slope	)	WC Docket No. 04-347
Cooperative Telephone Company, Inc.	)	(DA 04-2871)
An Incumbent Local Exchange Carrier in the	)	
Iowa Exchanges of Oxford, Tiffin and Solon	)	

**REPLY COMMENTS OF SOUTH SLOPE  
COOPERATIVE TELEPHONE COMPANY, INC.**

**Introduction**

These Reply Comments are filed pursuant to the Commission's Public Notice ("Notice"), DA 04-2871, released September 3, 2004, seeking comments on the August 24, 2004 Petition of South Slope Cooperative Telephone Company, Inc. ("South Slope"). The South Slope Petition seeks an FCC declaration that it is an Incumbent Local Exchange Carrier ("ILEC") in the Iowa exchanges of Oxford, Tiffin and Solon. The Petition was filed pursuant to section 251(h)(2) of the Communications Act of 1934, as amended ("the Act").

Comments were filed by Qwest Communications International, Inc. ("Qwest"), the Iowa Utilities Board ("IUB") and Iowa Telecommunications Services, Inc. ("IT") in response to the Notice.

Only IT opposes the South Slope Petition. Qwest, for instance, "supports" South Slope's request that its Petition seeking incumbency status be included in a draft Notice of Proposed Rulemaking ("NPRM") specific to Mid-Rivers Telephone Cooperative, Inc., or in a separate NPRM specific to South Slope. (Qwest Comments, pp. 2-3). (Also see,

South Slope Petition requesting inclusion of its reclassification request in the Mid-Rivers NPRM or, alternatively, the speedy issuance of an NPRM to deal with its own Petition, (id. p. 8).

The IUB, likewise, does not oppose South Slope's reclassification request, for interstate purposes. Its Comments summarize its concern that IUB jurisdiction remain unaffected by FCC action on South Slope's Petition: "For this reason [the Iowa statutory scheme relating to local exchange providers], it is important that any action taken by the Commission with respect to South Slope's petition should be explicitly and clearly limited to South Slope's status for interstate purposes." (IUB Comments, p. 2).

As mentioned earlier, only IT opposes South Slope's request to be reclassified as an ILEC in the Iowa exchanges of Tiffin, Oxford and Solon, where IT currently enjoys ILEC status for interstate purposes. IT's concerns, while dressed up as arguments running to the public interest element of Section 252(h)(2) of the Act, amount to nothing more than a handful of speculative and irrelevant allegations flung upon the record, in hopes that something would stick. In this respect, IT's Opposition is peppered throughout with the language of speculation. Phrases such as "it seems odd," "Iowa Telecom finds it incredulous," "there must be more to South Slope's desire," fairly represent the speculative nature of IT's charges, although these quotations appear within only two pages of IT's Opposition (id., pp.9-10). The pleading is notable throughout for this kind of speculation and absence of relevant facts.

As the following discussion demonstrates, none of IT's charges have legs. It has neglected its customer base in the three exchanges and, indeed, attempts no argument against South Slope's showing that it has acquired customers representing from 82% to

86% of the customers in the three exchanges (South Slope Petition, p. 3). Instead, IT wants out of ILEC status there, as seen by its attempt to achieve deregulation through current proceedings before the IUB. Inconsistently, it would deny ILEC status to South Slope who has demonstrated significantly superior commitment to the exchanges' customers, a fact that is largely ignored in IT's papers. The Commission should reject IT's arguments for the cynical distraction they are, and proceed as soon as possible with the relief requested in South Slope's Petition.

### **IT'S CRITICISMS ARE BASELESS**

As previously noted, IT's Opposition relies upon a number of mistaken hypotheses and factual errors to conclude that South Slope's Petition is not in the public interest and, indeed, "it would seem" that South Slope has not complied with federal law. (IT Opposition, p. 13). IT begins its argument with a somewhat myopic discussion of prior IUB orders expanding South Slope's Certificate of Public Convenience and Necessity ("Certificate"). (IT Opposition, pp. 4-7). The balance of IT's pleading is devoted to the speculative and incorrect claims mentioned earlier. These subjects are discussed in order.

### **The Prior IUB Orders Expanding South Slope's Certificate**

South Slope's Petition contains a detailed history of the process by which its Certificate was amended to add the exchanges of Tiffin, Solon and Oxford to South Slope's North Liberty exchange. The Petition discusses both the IUB's July 14, 1998 Order Granting Application in which the IUB found the requested expansion to be in the public interest, and it discusses the IUB's July 8, 1999 Certificate No. 0120 in which the South Slope's North Liberty exchange map was revised to add Tiffin, Solon and Oxford.

(South Slope Petition, p. 2). Copies of the Application, Order and Certificate were supplied with South Slope's Petition.

Against this background, however, IT argues that South Slope holds a CLEC certificate to provide service within the three exchanges (IT Opposition, p. 4), and that the requisite findings and procedure have not occurred to give South Slope ILEC status. Accordingly, IT argues that it is still the ILEC under Iowa law, and relatedly, that the IUB's prior public interest finding is "perfunctory" – presumably entitled to no weight by this Commission. (Id., pp. 4-7).

Although these arguments are off the mark (as is discussed below), South Slope agrees with the IUB's Comments that its intrastate rights and responsibilities will ultimately be determined by that agency.

IT's suggestion that South Slope holds a "CLEC certificate of public convenience and necessity" (IT Opposition, p. 4), and hence that the IUB's public interest finding is "perfunctory" is simply wrong, however. South Slope's Certificate, amended by both the July 14, 1998 Order Granting Application and July 8, 1999 Certificate No. 0120, issued by the IUB, was a certificate under which South Slope historically has provided local exchange service as an incumbent carrier. Both the Order Granting Application and the July 8, 1999 Certificate reflect: a) that the Oxford, Solon and Tiffin exchanges "are currently being served by GTE Midwest Incorporated"; b) that South Slope provided notice "to all affected utilities [e.g., GTE] of its amendment to application to certificate, filed June 4, 1998, listing these exchanges [ ]"; and c) that South Slope's North Liberty exchange map was revised "to add the Exchanges of Tiffin, Solon and Oxford" as shown on the service territory maps of GTE. (See South Slope Petition, at attachments).



Thus, IT's position that South Slope could only enjoy ILEC status after a specific process involving boundary disputes, has already occurred. For instance, IT says about this process: "In other words, the territory currently known as the Oxford, Solon, and Tiffin Exchanges could be assigned to some combination of South Slope's Amana, Fairfax or North Liberty Exchanges." IT Opposition, p. 5. IT contends in this same vein that neither it, nor "its predecessors", has received notice relating to modification of South Slope's boundary vis-à-vis the three Exchanges. (Id., p. 6, n. 14).

As should be plain by now, the alleged procedural shortcomings do not exist. South Slope's tariffs and maps were revised to include the three exchanges with the North Liberty exchange, and duly approved by the IUB; and IT's predecessor was given notice of South Slope's application, but chose not to contest it.

IT's wooden argument that it is "the ILEC in the Three Exchanges" (IT Opposition; p. 7) and hence the IUB's public interest findings in favor of South Slope presumably are entitled to no deference (as "perfunctory") are belied by the record. Indeed, certificates of public convenience and necessity are non-exclusive under Iowa law, a matter neither discussed or even acknowledged by IT. See Iowa Code § 476.29(12)(2003); 199 Iowa Administrative Code § 22.20(4). This hardly leads to a conclusion that South Slope is a CLEC, or a conclusion that the IUB's public interest finding in its favor is "perfunctory" whatever its classification.

In sum, there is at least as much reason, based both on Iowa law and prior IUB Orders, to conclude that South Slope enjoys "co-ILEC" status in the three exchanges for intrastate purposes. And, whether the IUB decides that to be the case in the future, or not, does not detract from the IUB's public interest findings in favor of South Slope. The

overwhelming majority of customers in the three exchanges have voted with their feet: they now enjoy better service quality and choices, at better rates, and all while enjoying cooperative ownership benefits for the first time. The IUB's public interest finding was hardly perfunctory – it was prescient.

**IT's Other Arguments Provide No Basis  
To Deny South Slope's Rulemaking Request**

As previously discussed, much of IT's Opposition consists of unsubstantiated conjecture as to nefarious motives assigned to South Slope for desiring ILEC status in the three exchanges. These arguments are covered in a veneer of public interest concern, but they are baseless.

IT begins by questioning South Slope's motives for seeking ILEC status for a mere \$25,500.00 annual increase in NECA settlements. (Opposition, p. 7). It states "with certainty" that the administrative burdens of separate accounting for non-regulated operations (the avoidance of which would be a benefit for South Slope, see e.g., Petition, p. 6) are not worth the costs of Section 251(c) compliance. Id. Indeed, IT finds such a business decision "incredulous". Id., p. 9. It thus reasons "there must be more" to South Slope's motives, and goes on to posit that South Slope is out to game the system – discussed as a "windfall" for both South Slope's interstate and intrastate operations. Id., pp. 9-11.

These points are truly frivolous. First, whatever business decisions IT would make for itself is hardly an objective standard by which South Slope's internal business decisions can be measured. IT has over 250,000 access lines within the State of Iowa, while South Slope has approximately 19,500. South Slope estimates that between three to four employees' time could be saved were it not required to maintain the separate

accounting and operations for its interstate operations. With the superior economies of scale and scope available to a carrier more than ten times South Slope's size, it is obvious that IT's business decisions should<sup>1</sup> exhibit different inflection points than would similar business decisions for South Slope. The suggestion that South Slope should be concerned about Section 251(c) compliance is likewise off the mark. South Slope's Petition pointed out that its rural exemption previously has been lifted by the Iowa Utilities Board. (*Id.*, pp. 7-8). South Slope thus is familiar with this requirement and has been for some time. IT evidently overlooked this fact.

The rest of IT's syllogism: 'There must be more to the benefit side, since IT wouldn't make the same business decision; and the "more" is a nefarious plan to exact "windfalls" from federal and state revenue pools,' fails for the same reason. All of the assumptions are either based upon speculation, are flatly untrue or irrelevant. For instance, IT's claim that there "must be more" is grounded in part upon an assumption that South Slope desires to game the federal USF: "One possible motivation is increased universal service revenue." (IT Opposition, p. 9). IT then goes on to conclude, based on calculations that ignore South Slope's status as an average schedule company, that South Slope will "receive a net windfall of \$60.00 per year per line" in federal support if the FCC were to grant South Slope a study area waiver. (*Id.*, p. 10).

The calculations which demonstrate the approximate \$25,500.00 annual increased revenue impact are appended to this pleading as Attachment A. These calculations are

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<sup>1</sup> South Slope notes that IT's assertions as to what its business decisions would be is completely unsupported by an affidavit or Declaration Under Penalty of Perjury as required by the Commission's Rules. The same is true, of course, for the rest of its "facts" urged upon the Commission in its pleadings. As a practical matter, however, one is left to question in the first place the wisdom of adopting a standard based on the business judgement of a carrier whose decisions have resulted in a wholesale defection of its customer base.

based upon, and reflect settlement receipts from, the National Exchange Carrier Association (“NECA”) in whose revenue pools South Slope participates as an average schedule carrier. The calculations were performed by the Company’s consultant, Mr. Don Lee, a Senior Consultant in the Martin Group consulting firm (a sworn statement accompanies these Reply Comments to support the calculations). In any event, IT’s simple math is incorrect, and does not reflect average schedule settlement formulae to which South Slope is subject. Neither does IT’s simple math reflect that South Slope will require a study area waiver from the Commission, which process concerns itself with preventing unwarranted revenue effects.

IT’s speculation that South Slope is out to achieve a “windfall” at the intrastate level is wrong and irrelevant. (IT Opposition, pp. 10-11). The IUB’s Comments in this proceeding demonstrate that it is keenly aware of its sphere of authority and potential intrastate issues raised by South Slope’s intrastate carrier status. And, unlike the IUB’s earlier public interest findings which should be given weight by the FCC here, as previously discussed, IT offers this Commission nothing more than its own, irrelevant speculation.

IT piles up yet more allegations in an attempt to justify requirement of “a detailed accounting and reconciliation of South Slope’s universal service and interstate interexchange access reporting... for the past five years.” (IT Opposition, p. 14). But this is more of the same.

For instance, IT complains that South Slope refused to port numbers for IT. (*Id.*, p. 12). IT says that this is “clearly a matter of federal jurisdiction.” The basis for South Slope’s refusal to provide the interim portability for the two customers identified by IT

was, and is, legally valid. Indeed, if it were wrong, IT should have filed an FCC complaint against South Slope, instead of letting the matter lapse under Section 415 of the Act (47 U.S.C. § 415). Moreover, South Slope has stated in writing that it would provide permanent number portability to IT for the three exchanges. (IT Opposition, at Attachment C, May 4, 2004 letter to Mr. David Porter). So far, IT has not shown any interest in the offer.

IT also complains that South Slope reported the “entirety of its lines in the Three Exchanges as incumbent lines associated with the North Liberty Exchange.” (IT Opposition, p. 12). IT says this provides grounds for an investigation. But, this charge doesn’t stick, either. The survey to which South Slope responded was part of an IUB proceeding. As previously discussed, South Slope’s boundary expansion provides more than ample grounds to conclude that South Slope is at least one of two ILECs serving the three exchanges for intrastate purposes. This hardly rises to the level of improper activity.

Along these same lines (the alleged need for an investigation) IT cites “admissions” of reporting errors regarding South Slope’s “CLEC” operations, citing South Slope Cooperative Telephone Company Petition for Waiver of Deadline in 47 C.F.R. Section 54.307(C), Order, CC Docket No. 96-95, DA 04-2878 (rel. Sept. 3, 2004). But, this matter does not constitute evidence of wrongdoing, either. The fact is that South Slope did not timely file certain line counts for wireless lines for which South Slope had ETC status. It sought a waiver to file the line counts out-of-time, which the referenced Order denied. The charge that this demonstrates any kind of improper activity is simply frivolous. South Slope miscalculated a filing date, brought it to the Commission’s

attention and suffered the financial consequences when the out-of-time filing request was denied.<sup>2</sup>

The remaining areas of criticism center upon IT's pleas for delay to consider what it says are important policy issues. It argues that the Commission should consider the obligations that would remain for IT were South Slope declared to be the ILEC (IT Opposition, p. 15); it argues that the issue of study area definition is important, as are carrier of last resort obligations ("COLR") and that dominant/non-document carrier classification will have to be reevaluated. *Id.*, pp. 15-17. Finally, IT argues that the IUB is the Commission's "regulatory partner" and that final FCC action should await an IUB decision on related issues.

Apart from the unprincipled attempt to delay FCC action pending the completion of Iowa proceedings -- IT has demonstrated no logical link requiring the agencies to act in tandem -- South Slope does not quarrel with the proposition that the policy questions are fair topics in a rulemaking. That should occur swiftly, however, in order to avoid rewarding IT's poor performance by regulatory delay.

Nonetheless, the context of IT's policy decision merits brief comment. As to IT's claim that South Slope would receive unjust enrichment through the study area waiver process, South Slope would refer the Commission back to IT's "windfall" claims. It is clear that IT does not understand the average schedule settlement process, and equally clear that the study area process, and Commission policies developed through this vehicle, are designed at every turn to prevent precisely such a result.

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<sup>2</sup> IT attempts to make hay of a statement in a memorandum by South Slope's counsel to conclude that South Slope is charging 'inappropriate' access rates. IT is straining at a gnat here. South Slope answered the question asked, which assumes a non-existent billing relationship among those who use South Slope's

IT's challenge that South Slope demonstrate its ability to discharge its COLR obligations, likewise merits discussion. Specifically, it states that South Slope "has yet to build a network to the entire geographic area [ ]". (IT Opposition, p. 16). IT has it exactly backwards. South Slope has built facilities throughout the three exchanges, and IT has not. For this reason, South Slope is not concerned with IT's threat to deny unbundled local loops to extend South Slope's service. The 82%-86% customer penetration rates achieved by South Slope have been accomplished with its own facilities. South Slope will supplement the record in the near future with a comprehensive facilities map which conclusively demonstrates South Slope's extensive facility deployment in the exchanges, and IT's concomitant failure to extend its own facilities into important areas of population growth and business commerce. In short, the COLR argument is a scare tactic, and is baseless.

### **Conclusion**

South Slope's Petition provides a compelling case for the issuance of a speedy rulemaking, or else inclusion in the Mid-Rivers Telephone Cooperative, Inc. rulemaking now before the Commission, in order to declare South Slope as an ILEC in the Iowa exchanges of Tiffin, Oxford and Solon. Over five years ago the IUB found that the expansion of South Slope's certificate in order to provide local exchange service in these three areas, was in the public interest. As the uncontested record shows, South Slope has been uniquely successful in offering service to the customers who were former IT customers. In short, if there is a case for declaring a party like South Slope to be an incumbent LEC under Section 251(h)(2) of the Act, this is it.

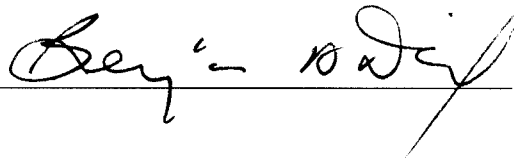
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services. South Slope believes, however, that it is, and has been, in compliance with applicable access charge rules, at all times.

South Slope submits that IT's criticisms as to its motives are nothing more than a sideshow. This Reply pleading discusses each of IT's allegations, in detail, and demonstrates them to be groundless. In sum, there is no "there" there, and any concern at all about interstate financial impacts could be further addressed through the safety net of the FCC's study area waiver proceedings.

South Slope respectfully submits that the relief requested in its Petition should be granted.

Respectfully submitted,

By: 

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Counsel for South Slope Cooperative  
Telephone Company, Inc.

Dated: October 19, 2004



# South Slope Cooperative Telephone

## NECA Settlements

	As Currently Reported	Updated w/ 6 Exch. Only
<b><u>Common Line</u></b>		
Common Line Schedule (A/L x Rate per line)	\$137,762	\$177,529
CL Realized Schedule (Including Line Port Shift)*	\$161,143	\$207,135
Add Universal Service Contrib. Reimb. of	\$10,968	\$14,936
CL Settlement	\$172,111	\$222,071
Less End User Net Earned Revenue	\$102,950	\$133,297
Less CCL Net Earned Revenue	\$10,203	\$13,323
CL Net Settlement	<b><u>\$58,958</u></b>	<b><u>\$75,451</u></b>

	As Currently Reported	Updated w/ 6 Exch. Only
<b><u>Traffic Sensitive</u></b>		
SPA Settlement	\$73,334	\$83,778
SS7 Settlement	\$1,182	\$1,182
Distance Sensitive	\$27,262	\$33,587
Non-Distance Sensitive	\$13,204	\$14,839
Central Office Basic	\$67,953	\$90,075
Total TS Basic Schedule	\$159,554	\$193,855
(Total of Traffic Sensitive including Line Port Shift)*		
Less SW Net Earned Revenue	\$99,500	\$135,420
Less SP Net Earned Revenue	\$89,518	\$102,267
Traffic Sensitive Net Settlement	<b><u>-\$29,464</u></b>	<b><u>-\$43,832</u></b>

Total Net Balance	<b>\$29,494</b>	<b>\$31,619</b>
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Monthly Increase/(Decrease) from Current		<b>\$2,125</b>
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Annual Increase/(Decrease) from Current		<b>\$25,500</b>
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\* The Line Port Shift is a percentage of the settlement "shifted" from the Traffic Sensitive Settlement to the Common Line Settlement.

## **DECLARATION OF DON LEE**

I, Don Lee, Senior Consultant for the Martin Group in Mitchell, South Dakota, declare under penalty of perjury that I have calculated the annual Interstate revenue impact for South Slope Cooperative Telephone Company, Inc., as is discussed and attached to the foregoing reply comments. These facts and calculations as set forth in the attachment are true and correct to the best of my knowledge

Dated this 18<sup>th</sup> day of October, 2004

Signed:



---

Don Lee, Senior Consultant

**DECLARATION OF J. R. BRUMLEY**

I, J. R. Brumley, Chief Executive Officer of South Slope Cooperative Telephone Company, Inc., declare under penalty of perjury that I have read the foregoing reply comments of South Slope Cooperative Telephone Company, Inc., and the facts stated therein are true and correct to the best of my knowledge

Dated this 18<sup>th</sup> day of October, 2004

Signed:

A handwritten signature in cursive script, appearing to read "J.R. Brumley", is written over a horizontal line.

J.R. Brumley

**CERTIFICATE OF SERVICE**

I hereby certify that I am an attorney with the law offices of Blooston, Mordkofsky, Dickens, Duffy & Prendergast and that on October 19, 2004 I caused to be mailed by first class United States mail, postage prepaid, a copy of the foregoing **"Reply Comments of South Slope Cooperative Telephone Company, Inc."** to the following:

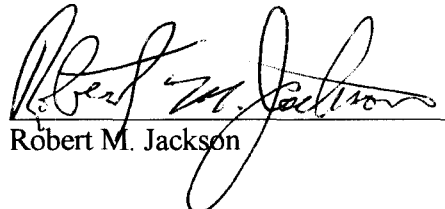
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